IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 129 OF 2005

M/s. Trimurti Constructions & Anr. ..Applicants.

Versus

Smt. Ranjana Anant Kadam & Anr. ..Respondents.

Mr. S.V.Pitre for the Applicants.
Mr. R.G.Ketkar for Respondent No.1.

CORAM : B.H. MARLAPALLE, J.
DATED : 08TH SEPTEMBER,2005.

P.C.:

1. Heard Mr. Pitre, the learned counsel for the applicants and Mr. Ketkar, the learned counsel for the Respondent No.1, original plaintiff.

2. The applicants are impleaded as defendant Nos. 1 and 2 in regular civil suit No. 408/1993 which has been instituted on or about 25.02.1993.

3. During the course of trial of the suit, the plaintiff did not step in the witness box to depose in support of her case and instead Mr. Anant Namdeo Kadam submitted his affidavit by way of examination -in-chief of the plaintiff in his capacity as a power of attorney of the plaintiff. This prompted the appellants to move an application at Exh. 79 on or

about 17.6.2005, praying for return of the plaint under Order VII, Rule 11 of the C.P.C.. By the impugned order dated 12.7.2005, this application has been dismissed.

4. The trial court has noted that Mr. Kadam had no power of attorney for the plaintiff but he being the husband of the plaintiff and subsequently having brought on record on 25.4.2005, a copy of the power of attorney, the defect was cured and in any case under the provisions of Order VI, Rule 15, any other person can also appear/ verify on behalf of the plaintiff before the court. For these reasons, the application at Exh. 79 has been dismissed.

5. The affidavit placed on record by Mr. Anant Kadam before the trial court specifically states that he was acting as the power of attorney and not as the husband of the plaintiff, though the court has taken note of the fact that he is the husband of the plaintiff. In the case of Janki Vashdeo Bhojwani vs. Indusind Bank Ltd., (AIR 2005 SUPREME COURT 439), the scope of the authority of holder of power of attorney has been clarified in the following words :-

"Order III -Rules 1 and 2 of C.P.C., empowers

> the holder of power of attorney to 'act' on behalf of the principal. The word 'acts' employed in order III, rules 1 and 2 of C.P.C., confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

6. Mr. Ketkar, the learned counsel for the respondent No.1/plaintiff referred to the provisions of Order VI, Rule 15 and submitted that even the plaintiff's husband could depose before the trial court in support of the pleadings that have been made and it is not necessary that the plaintiff alone must

step in the witness box. If that be so, then Mr. Anant Kadam could not depose as a power of attorney holder or file an affidavit at Exh.47.

7. Under the circumstances, this civil revision application can be disposed off by clarifying that the trial court while deciding the suit shall consider the testimony of Mr. Anant Kadam, keeping in mind the law laid down in the case of Janki Vasudeo Bhojwani (supra), in case he could be validly treated to be the power of attorney holder as on the date he deposed before the trial court in accordance with law and in view of the provisions of Order VI Rule 15, provided he deposes as the husband of the plaintiff.

DT.08.09.05 (B.H.Marlappalle,J)

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